

1 Michele Besso
Northwest Justice Project
2 501 Larson Bldg., 6 South 2nd Street
Yakima, WA 98901
3 (509) 574-4234

4 Weeun Wang
Farmworker Justice
5 1126 16th Street NW, Suite 270
Washington, DC 20036

6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

9 ELVIS RUIZ, FRANCISCO JAVIER
10 CASTRO and EDUARDO MARTINEZ,

11 Plaintiffs,

12 vs.

13 MAX FERNANDEZ and ANN
FERNANDEZ, a marital community;
14 and WESTERN RANGE
ASSOCIATION, a foreign nonprofit
15 organization,

16 Defendants.

No. CV-11-3088-RMP

PLAINTIFFS' REPLY
MEMORANDUM IN SUPPORT
OF MOTION TO COMPEL
DISCOVERY RESPONSES

17
18 **I. INTRODUCTION**

19 Plaintiffs moved the Court pursuant to Federal Rule for Civil Procedure
20 37(a) for an order compelling Defendant Max Fernandez to produce requested
21 documents and information because Mr. Fernandez' testimony at his deposition

1 referred to possible additional documents that had not yet been produced.

2 Defendant has now responded that he has no additional documents responsive
3 to plaintiffs' request for production Nos. 1, 19 or 26, ending that inquiry.

4 As for Interrogatory No. 12, Mr. Fernandez' testimony at the deposition
5 referred to two trailers that plaintiffs had slept in on the range, neither one of
6 which is the one that had been approved for use by the state inspector.

7 Plaintiffs are simply asking for the information requested in Interrogatory No.
8 12 for each of the trailers occupied by any of the plaintiffs. Fernandez
9 Deposition, 141:21- 142: 6; 143:22-144:8, Exhibit A to Declaration of Michele
10 Besso.

11 Finally, with respect to plaintiffs' Request for Production No. 33: defendant
12 objects that plaintiffs had asked only for "service or maintenance records",
13 which defendant does not have, as opposed to the service or maintenance
14 *expense* records that plaintiffs have requested in the motion. First of all, this is
15 a distinction without a difference, as a record of expenses incurred in servicing
16 vehicles may also constitute a record of the servicing or maintenance work
17 itself, especially in the absence of any other such records.

18 Secondly, defense counsel promised during the deposition of Max
19 Fernandez to produce such records if Max Fernandez had any. Deposition of
20 Max Fernandez, 83:1-4, Exhibit A to Declaration of Michele Besso.

1 If in fact Mr. Fernandez has no such records, defendant should just say so,
2 and the matter would be resolved.

3 II. ARGUMENT

4 A. The Court Should Order Defendant to Complete their Responses to 5 Interrogatory No. 12 and Request for Records No. 33..

6 At this time, it appears that the only outstanding issues from Plaintiffs'
7 motion to compel are the completion of the answer to Interrogatory No. 12, and the
8 Request for Production No. 33 for records of vehicle maintenance and servicing
9 expenses.

10 Plaintiffs request that the Court compel defendant to identify and describe
11 mobile housing units occupied by any of the plaintiffs while herding sheep for Mr.
12 Fernandez, as requested by Interrogatory 12, and produce any "service or
13 maintenance records related to any vehicles and machinery identified in answer to
14 Interrogatory No. 7", including records of the associated expenses for such service
15 or maintenance, as previously promised by counsel, by December 5, 2012.

16 In addition, Defendant Fernandez and his attorney should be ordered to pay
17 Plaintiffs' reasonable costs and fees for bringing this motion, since it appears that
18 this motion could have been avoided if defense counsel had responded to requests
19 to confer. ECF 110, ¶¶9-12.

20 Dated this 29th day of November, 2012.

1
2 Presented by:

3 NORTHWEST JUSTICE PROJECT
4

5 /s/ Michele Besso
Michele Besso, WSBA #17423
6 Attorney for Plaintiffs

7 FARMWORKER JUSTICE

8 By: /s/ Weeun Wang
Weeun Wang
9

10 Attorneys for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

John Barhoum: jbarhoum@dunncarney.com

Timothy J. Bernasek: tbernasek@dunncarney.com

Gary Lofland: glofland@glofland.net

Weeun Wang: wwang@farmworkerjustice.org

/s/ Estella M. Del Villar
Estella M. Del Villar, Legal Assistant for
Michele Besso, WSBA #17423
Attorney for Plaintiffs
Northwest Justice Project
510 Larson Bldg., 6 South 2nd St.
Yakima, WA 98901
(509) 574-4234
Email: micheleb@nwjustice.org